IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 138 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

M/S.GARDEN SILK MILLS PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 138 of 1996
MR MIHIR JOSHI with MR MANISH R BHATT for Petitioner
MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Tribunal has referred the following two questions at the instance of the revenue for the opinion of this Court :-

"(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to a deduction of the sum of Rs.7000/paid as legal fees in respect of the proceedings in the case of M/s Garden Silk Wvg. Factory a firm whose business is taken over by the assessee limited Company ?

(2) Whether on the facts and circumstances of the case the Tribunal was right in law in coming to the conclusion that notwithstanding the provisions of Section 80VV of the Income-tax Act, 1961 the assessee was entitled to a deduction in respect of the sum of Rs.7000/- paid as legal fees by the assessee Company in respect of the proceedings of M/s Garden Silk Wvg. Factory, the succeeded firm ?"

2. The assessment year is 1983-84. The Tribunal relied upon its own decision in earlier assessment years and in light of the pendency of those references, this reference has been made.

3. We have heard Mr Mihir Joshi, learned counsel for the revenue and Mr MJ Shah, learned advocate for the respondent-assessee. At the time of hearing, our attention was invited to the decision dated 16.10.2001 in Income-tax Reference No. 81 of 1992 which was in respect of assessment year 1982-83. In the said decision, while deciding similar controversy, this Court relied upon the decision of this Court dated 14.11.2000 in Income-tax Reference No. 89 of 1985 pertaining to assessment years 1975-76, 1976-77 and 1978-79 in assessee's own case. Both the parties agree that identical controversy has already been decided in the aforesaid two decisions. For the reasons stated in the said decisions, we hold that the Tribunal was not right in law in coming to the conclusion that notwithstanding the provision of Section 80VV of the Income-tax Act, 1961 the assessee was entitled to deduction in respect of Rs.7000/- paid by the assessee as legal fees in respect of proceedings of M/s Garden Silk Weaving Factory. Both the questions referred to us are, therefore, answered in the negative i.e. in

favour of the revenue and against the assessee.

The reference stands disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-